

STATE OF MICHIGAN  
COURT OF APPEALS

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STOP TAXING OUR PETROLEUM,

Plaintiff-Appellant,

v

DEPARTMENT OF TREASURY,

Defendant-Appellee.

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UNPUBLISHED

March 14, 2006

No. 265631

Court of Claims

LC No. 04-000050-MZ

Before: Smolenski, P.J., Whitbeck, C.J., and O’Connell, J.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition to defendant, pursuant to MCR 2.116(C)(5), on its claim under the Michigan Underground Storage Tank Financial Assurance Fund Act (MUSTFA), MCL 324.21501 *et seq.* We affirm.

Plaintiff is an unincorporated association of companies engaging in the retail sale of refined petroleum. Plaintiff’s members own and operate petroleum underground storage tanks throughout Michigan. The MUSTFA imposes a 7/8 cent per gallon regulatory fee upon all refined petroleum sold for resale or consumption within Michigan. MCL 324.21508(1). This fee finances an assistance fund, which aims to protect the environment from leaking tanks. MCL 324.21505. Defendant Department of Treasury is responsible for collecting this fee. Before its amendment in 2004, MCL 324.21508(2) required the department to stop collecting the regulatory fees as soon as the fund had enough money to meet its obligations, but 2004 PA 390 eliminated this restriction. Nevertheless, plaintiff commenced the instant litigation alleging that, prior to the amendment, defendant had collected sufficient funds to meet its MUSTFA obligations but did not stop collecting the fee. Plaintiff sought a refund of the excess. The Court of Claims dismissed plaintiff’s claim, concluding that plaintiff lacked standing.

Plaintiff argues that the trial court erred in finding that it lacked standing. We disagree. “Whether a party has standing is a question of law” that we review *de novo*. *Lee v Macomb Co Bd of Commr’s*, 464 Mich 726, 734; 629 NW2d 900 (2001). “Standing is a legal term used to denote the existence of a party’s interest in the outcome of litigation that will ensure sincere and vigorous advocacy.” *House Speaker v State Admin Bd*, 441 Mich 547, 554; 495 NW2d 539 (1993). It is a constitutional mandate rooted in the separation of powers. *Nat’l Wildlife Federation v Cleveland Cliffs Iron Co*, 471 Mich 608, 621-622; 684 NW2d 800 (2004). To demonstrate standing, a party must establish the following:

First, the plaintiff must have suffered an “injury in fact”—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) “actual or imminent, not ‘conjectural’ or ‘hypothetical.’” Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be “fairly . . . traceable to the challenged action of the defendant, and not . . . the result [of] the independent action of some third party not before the court.” Third, it must be “likely,” as opposed to merely “speculative,” that the injury will be “redressed by a favorable decision.” [*Lee, supra* at 739, quoting *Lujan v Defenders of Wildlife*, 504 US 555, 560-561; 112 S Ct 2130; 119 L Ed 2d 351 (1991) (citations omitted).]

Plaintiff lacks standing under this test. The MUSTFA provides that “[t]he department of treasury shall precollect regulatory fees from persons *who refine petroleum* in this state for resale in this state or consumption in this state and *persons who import refined petroleum* into this state for resale in this state or consumption in this state.” MCL 324.21508(2) (emphasis added). By its plain terms, the MUSTFA regulatory fee is collected from petroleum refiners and importers. *Id.* Plaintiff’s members, by plaintiff’s own admission, are neither of these. Acknowledging that the regulatory fee “is imposed at the wholesale or refining level, or the imported level,” plaintiff argues that the fee is effectively passed on to its members. This “injury” does not confer standing. Under plaintiff’s reasoning, whenever an allegedly illegal government regulatory fee assessment and collection is “passed on” through commerce, an injury sufficient to confer standing would result. This reasoning is contrary to case law holding that in such circumstances, the direct taxpayer is the party with standing to the challenging the fee. See *Morgan v Grand Rapids*, 267 Mich App 513, 514-515; 705 NW2d 387 (2006). Plaintiff’s members have neither been assessed nor have they paid the regulatory fee at issue. Further, the injuries claimed by plaintiff are predicated on the independent action of the refiners and importers in allegedly passing on the cost of the regulatory fees to plaintiff’s members, so they do not provide standing for plaintiff to challenge the fees. *Lee, supra*. Accordingly, plaintiff lacks standing to pursue this case.<sup>1</sup>

In light of our disposition, it is unnecessary to address the other issues plaintiff raises on appeal.

Affirmed.

/s/ Michael R. Smolenski  
/s/ William C. Whitbeck  
/s/ Peter D. O’Connell

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<sup>1</sup> Plaintiff argues that MCL 324.21508(7) grants it standing to pursue this case under the Revenue Act. But this subsection merely provides that defendant “may” use certain procedures provided in the Revenue Act. It does not require defendant to do so. See *Phinney v Perlmutter*, 222 Mich App 513, 561; 564 NW2d 532 (1997) (use of “may” in a statute “ordinarily designates a permissive provision”). We also note that the Legislature lacks authority to expand standing beyond constitutional limits. *Nat’l Wildlife Federation, supra* at 621-622.